(223) A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

5/11/07

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Criminal Appeal No.1106/2001	
	APPELLANT:	Surjan Ram, S/o Bhagtu Ram, Aged about 50 years, Agriculturist and R/o village Sukhari, P.S. & Tahsil Ambikapur District Surguja (Chhattisgarh)
	Versus	
	RESPONDENT:	The State of Chhattisgarh,
	Criminal Appeal No.1182/2001	
	APPELLANT: Accused	Bechan Ram, S/o Baniya Ram. Aged about 27 years, R/o Gram Sukhari, Police Station - Thana Ambikapur, District - Surguja.
	Versus	
	RESPONDENT:	State of Chhattisgarh, Through Police Station - Thana Ambikapur District Surguja (C.G.)
	Criminal Appeal No.1211/2001	
	APPELLANTS: (In Jail) 1.	Achambhit Ram S/o Budhdhuram, aged about 30 years, Occupation- Agriculturist.
	2.	Dharampal Das, son of Bigan Ram Aged about 38 years, Occupation- Agriculturist.

GRPRJ

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		3. Pal Das, son of Late Biganram, aged about 32 years, Occupation- Agriculturist. 4. Nohar Das, son of Pancham Das, aged about 30 years, Occupation - Agriculturist. 5. Lakhanram, son of Chherturam, aged about 26 years, Occupation - Agriculturist. 6. Harihar Das, son of Thogeldas, aged about 55 years, Occupation - Agriculturist. 7. Bechainram, son of Baniyaram, aged about 27 years, Occupation Agriculturist. All residents of village - Sukheri, P.S. Ambikapur, District Sarguja (C.G.). Versus
	RESPONDENT:	The State of Chhattisgarh, Through the P.S. Jainagar, District - Sarguja (C.G.) AND
		Criminal Revision No.551/2001
	APPLICANTS:	1. Puranram, s/o Shivnandan, aged About 38 years, Occupation - Agriculture. (BROTHER OF DECEASED RAMNARAYAN)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		2. Prabhuram s/o Gendaram, aged About 45 years, Occupation Agriculture. (BROTHER OF DECEASED JAGDHARI) Both r/o village Ranpurkala, P.S./Tehsil Ambikapur, Post Sukhri, District Surguja, C.G Versus
	NON-APPLICANTS:	1. Chotku @ Ram Prasad, s/o Meeruram, age 26 years, Occupation Business. 2. Hulas Ram, s/o Baji Prasad, age 30 years, Occupation - Agriculture. 3. Dhani @ Dhaneshwar s/o Muneshwar, age 48 years, Occupation Agriculture. 4. Bhorlu @ Mohan Das, s/o Budhari, age 60 years, Occupation Agriculture. 5. Shyamlal @ Amadliha s/o Devnath, age 40 years, Occupation Agriculture. 6. Dashai Ram, s/o Agar Say, age 28 years, Occupation Agriculture. 7. Ramdev, s/o Son Say, age 27 years, Occupation Agriculture.

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

8. Baldev Ram s/o Bhagatu, age 35 years, Occupation Service.

(ACCUSED PERSONS)

All r/o village Sukhri, P.S. Ambikapur, District Surguja, C.G.

9. The State of Chhattisgarh, through P.S. Jainagar, District Surguja, C.G.

(PROSECUTION)

Present:

Shri Neeraj Mehta, counsel for the appellant in Cr.A. No.1106/26001.

Shri Gurudev Sharan, counsel for the appellant in Cr.A. No.1182/2001.

Shri Rajesh Pandey, counsel for the appellants in Cr.A. No.1211/2001.

Shri Rajesh Tiwari, counsel for the applicants in Cr. Rev. No.551/2001.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Division Bench: - **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT
(Delivered on 5-4-2007)

L.C. Bhadoo, J.

Criminal Appeal No.1106/2001 filed by Surjan Ram, Criminal Appeal No.1182/2001 filed by Bechan Ram, Criminal Appeal No.1211/2001 filed by

GR

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Achambhit Ram & Others and Criminal Revision No.551/2001 filed by Puranram & another are arising out of the same judgment dated 16-10-2001 passed by the Additional Sessions Judge, Surajpur, District Surguja, in S.T. No.7/2000, therefore, all the three appeals and revision are being disposed of by this common judgment.

The accused/appellants have preferred these appeals questioning legality and correctness of the judgment of conviction and order of sentence dated 16-10-2001 passed by the Additional Sessions Judge Surajpur, District Surguja in S.T. No.7/2000 whereby learned Additional Sessions Judge after convicting accused persons namely, Achambhit Ram, Dharampal Das, Paldas, Nohar Das, Surjan, Lakhan Ram, Harihar Das & Bechan Ram for commission of offence under Sections 147 and 302 of the I.P.C. for committing riot as members of unlawful assembly and for committing murders of Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath, sentenced each of the accused to undergo R.I. for 1 year under Section 147 of the I.P.C. and under Section 302 IPC to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 5 months for each murder. However, learned Additional Sessions Judge acquitted accused persons namely, Chhotku @ Ramprasad, Hulas Ram, Dhani @ Dhaneshwar, Bhorlu @ Mohan Ram, Shyam Das @ Amdaliha, Dashai Ram, Ramdev and Baldev of all the charges.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The case of the prosecution, in brief, is that on 2-10-99 at about 5 p.m. Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath (all deceased) along with Gulab Das (PW-15) & Kripa Shankar Singh (PW-16) went to village Sukhri. They were sitting at the residence of Bishun Ram (PW-1). At that time, 200-300 persons carrying Lathi, club & axe came on the spot. They started attacking Ramnarayan, Amar Sai, Jagdhari, Palva @ Ramnath, Kripa Shankar (PW-16) and Gulab Das (PW-15). First of all, they encircled Jagdhari, they attacked him, as a result of which he fell down, thereafter they attacked Ramnarayan and Palva @ Ramnath, they also fell down. Thereafter, they attacked Amar Sai in the field which was on the east side of the house, he also fell down. All the four persons succumbed to the injuries spontaneously. However, somehow, Kripashankar and Gulab managed to escape and ran away towards the forest. Kripashankar was carrying sword which was thrown by him in the house of Bishun, which was picked up by one Ramdev. Amar Sai was carrying Gupti, same was taken by whom is not known. The accused persons having formed common object indulged in the Marpeet. Accused Chhotku, Achambhit, Dharmapal, his younger brother Pal, Pulas, Dhani, Bhurlu, Shyam Gond, Nohar Das, Baldev Harijan, Surjan, Lakhanram, Dashai, Ramdev, Harihar and one Rorwa, resident of Chirmiri were involved in the Marpeet. These persons attacked with Lathi and Thenga.

Merg intimation (Ex.-P/43) of the above fact was given by Bishun Ram. Dehati First Information Report (Ex-P/44) was given by Bishun Ram.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Merg intimation Ex.-P/45 was also given by Bishun Ram, based on that First Information Report Ex.-P/46 for commission of offence under Sections 302, 147, 148 and 149 of the I.P.C. was registered. The Investigating Officer left for scene of occurrence and prepared site plan Ex.-P/47 of the place of occurrence. The I.O. prepared inquest Ex.-P/16 on the body of Ramnarayan, Ex.-P/17 on the body of Amar Sai, Ex.-P/18 on the body of Jagdhari and Ex.-P/19 on the body of Palva @ Ramnath. The dead bodies of Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath were sent for postmortem examination to the District Hospital, Ambikapur where team of doctors namely, Dr. Brijendra Kumar Shrivastava (PW-10), Dr. N.K. Pandey and Dr. S.K. Sinha conducted postmortem on the dead bodies of Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath, prepared postmortem reports Ex.-P/10, Ex.-P/11, Ex.-P/12 and Ex.-P/13 respectively. The doctor opined that cause of death of above persons was due to shock and haemorrhage from multiple injuries.

After completion of investigation, charge sheet was filed against the accused persons namely, Chhotku, Dharmapal, Achambhit, Ramdev, Surjan, Bechan Ram, Nohar Das, Lakhan Ram, Harihar Das, Dashai, Shyam, Paldas, Bhorlu, Dhaneshwar, Baldevram, Hulasram in the Court of Judicial Magistrate, 1st Class, Surajpur, who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The prosecution examined 22 witnesses at the trial in order to establish the charges against the accused persons. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime. Sukul Ram and Prabhuram filed their affidavit on 2-11-2000 before the trial Court to the effect that they had witnessed the incident. Sukul Ram stated that he is brother of deceased Ramnarayan and he witnessed the crime. Similarly, Prabhuram has also stated that he saw the accused persons when they were attacking Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath, therefore, the trial Court considering their affidavits and applications summoned them as Court witness exercising power under Section 311 of the Cr.P.C.. Sukul Ram was examined as Court witness No.1, whereas, Prabhu Ram was examined as Court witness No.2. The trial Court after hearing learned counsel for the respective parties, examination of the record, evidence available on record, acquitted the accused persons namely, Chhotku @ Ramprasad, Hulas Ram, Dhani @ Dhaneshwar, Bhorlu @ Mohan Ram, Shyam Das @ Amdaliha, Dashai Ram, Ramdev and Baldev of all the charges whereas, convicted and sentenced the accused/appellants as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellants have not disputed homicidal death of the deceased persons namely, Ramnarayan, Amar Sai, Jagdhari and Palva @ Ramnath. Moreover, PW-10 Dr. Brijendra Kumar

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Shrivastava who conducted postmortem on the dead bodies of the above four deceased persons has stated that cause of death was shock and haemorrhage from multiple injuries. The injuries were sufficient in the ordinary course of nature to cause death. Therefore, in view of the above, it is established that death of the above persons were homicidal in nature.

As far as involvement of the accused/appellants in crime in question is concerned, witnesses namely, PW-2 Kishun, PW-3 Mithilesh Kumar Gupta, PW-4 Mahendra, PW-5 Shashi Gupta, PW-6 Ramsunder, PW-7 Sukhnath, PW-8 Duhan, PW-9 Pulsai, PW-13 Siyachand, PW-18 Girjanandan, PW-19 Kalamsai and PW-20 Shiv Prasad have turned hostile and they have not supported the prosecution case. The evidence of Court witness Sukul Ram and Prabhu Ram has not been believed by the trial Court in para-25 of the judgment. It has been mentioned that Sukul is the resident of village Ranpur whereas, the incident took place in the village Sukhri i.e. about 5 km away from the village Ranpur. He has stated that on that day he went to cut grass in the field of Bishun Ram (PW-1). The Court observed that conduct of this witness is not trustworthy for the reason that there was no reason to go 5 km away to cut grass as same was available in the fields of village Ranpur. The evidence of Court witness Prabhu Ram has been disbelieved on the ground that he has not stated that he, in fact, saw the accused persons attacking the deceased persons. But he has stated that he saw the accused persons turning dead bodies of the deceased persons which appears to be unbelievable for the reason that he has stated that he was informed about

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the incident by PW-15 Gulab Das, who came all the way to inform him to village Ranpur at a distance of 5 km. After receiving information, he went to village Sukhri, thereafter he saw the accused persons turning the dead bodies of the deceased persons, this fact cannot be believed because it might have taken minimum 1 hour time for reaching PW-15 to Ranpur, thereafter this person went to village Sukhri. It was not possible for the accused persons to stay at the place of occurrence for one hour. The reasons assigned by the trial Court for disbelieving the evidence of these two witnesses are reasonable and plausible. Moreover, Sukul Ram has stated that he went to cut grass in the field of Bishun whereas, Bishun has not stated that Sukul came on the fateful day to cut grass to his field. Apart from that, Sukul is the brother of deceased Ramnarayan, therefore, he is an interested witness and his evidence is not sterling worth in order to establish his presence at the place of occurrence. Therefore, their evidence does not inspire confidence of the Court.

Now we are left with the evidence of PW-15 Gulab Das and PW-16 Kripashankar. As far as evidence of PW-15 Gulab is concerned, he has made substantial improvement in the Court evidence. In his statement recorded under Section 161 Cr.P.C. (Ex.-D/1) he had not disclosed the name of the accused persons who attacked the deceased persons whereas, before the Court he has stated that he saw the accused persons namely, Achambhit, Dharampal, Nohar and Bechan while attacking Jagdhari and thereafter Amar Sai. This fact was not disclosed by him before the I.O. while giving his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	statement under Section 161 Cr.P.C. regarding witnessing the four accused persons attacking the deceased persons. In para-7 of cross-examination, he has stated that if it has not written in his police diary statement (Ex.-D/1) that Achambhit, Dharampal, Bechan and Nohar were present at the place of occurrence, he cannot assign any reason for the same. In cross-examination, he denied almost all the portion of his statement Ex.-D/1 that such statement was not given by him to the police during investigation. In examination-in-chief, on being questioned by the Court this witness has stated that 20-25 persons came on the spot. He could not identify them. He was able to identify only 4 persons namely, Achambhit, Dharampal, Nohar and Bechan. He has further stated that he is not in a position to tell whether the accused persons present in the Court are out of those 20-25 persons who came on the spot because he does not know them. In view of the above evidence of this witness, it is difficult to believe that this witness was on the spot or he identified at least 4 persons attacking deceased Amar Sai and Jagdhari. It is admitted position that this witness belongs to village Ranpur which was the village of the deceased persons also. He has not disclosed the source of knowledge about the identity of these persons particularly when they are belonging to other village namely Sukhri. Even the Investigating Officer did not take trouble to arrange for identification parade of the accused persons in order to ascertain as to whether this witness was able to identify the persons who were members of attacking party nor this person has stated that accused persons to whom he has named and identified were known to him prior to the incident.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

PW-1 Bishun at whose residence the incident took place, who is the resident of village Sukhri, has stated in his evidence that the accused persons standing in the Court were not the persons who attacked the deceased persons. Therefore, evidence of PW-15 Gulab Das does not inspire confidence. It is settled law that if any witness has not said anything in his statement under Section 161 Cr.P.C. recorded by the I.O. and any improvement made in the Court evidence cannot be believed.

Now the evidence of PW-16 Kripashankar on whose testimony the trial Court has believed and convicted the accused persons remains to be scrutinized. This witness has stated that along with the deceased persons he was at the place of occurrence. He has stated that at the time of incident they were in the house of Bishun. They saw that 25-30 persons carrying Lathi, club, Tabbal, sword and stones in their hands came, they started attacking them. He has further stated that accused Dharampal, Pal, Achimbhit, Nohar Das, Surjan, Bechan, Lakhan and Harihar Das started attacking the deceased persons, they are today present in the Court among the accused persons. As a result of the attack made by these persons Jagdhari and Amar Sai fell down. They also attacked him 4-5 times with a club. He ran away and came to his house. He sustained injuries on the right ribs & right thigh. He has also stated in para-8 of his evidence that his injuries were examined through police station Surajpur. But no such injury report has been produced by the prosecution in order to establish his presence at the scene of occurrence. He has also changed the version of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the prosecution case that how he reached on the spot i.e. he has not supported the prosecution story regarding his coming to the place of occurrence with the deceased persons. In his statement under Section 161 Cr.P.C. he has denied that he stated before the police that 50 persons came, in fact, 20-25 persons came and attacked. The figure of 50 recorded in police statement Ex.-D/2 is not correct. This person also admitted in his cross-examination that he is facing criminal trial for murder case, one for commission of offence under Section 376 of the I.P.C. and another one for offence under Sections 294 & 506-B of the I.P.C. in various Courts at Surajpur.

PW-1 Bishun at whose residence incident took place has not supported the prosecution case. He has stated that persons present in the Court were not party to those persons who attacked the deceased persons. Again question arises before the Court about the veracity of the evidence given by this witness before the Court that this person is also the resident of Ranpur, the incident took place in village Sukhri which is at a distance of 5 km, he has not disclosed the source of identification of the accused persons that how he was knowing the accused persons by name. He has not stated that the eight accused persons to whom he has identified before the Court were known to him prior to the incident nor the I.O. arranged for identification parade particularly when the case of prosecution is that about 200-300 persons came and attacked. In these circumstances, it was imperative to have arranged identification parade to ascertain the identity

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of persons who attacked the deceased persons. PW-15 Gulab Das has stated that in fact Achambhit, Dharampal, Nohar and Bechan attacked Jagdhari and Amarsai whereas, this person has stated that Dharampal, Pal, Achambhit, Nohar, Surjan, Bechan, Lakhan and Harihar Das attacked the deceased persons. Therefore, this contradiction is also material which makes the evidence of these witnesses doubtful.

Therefore, looking to the nature and for the reasons mentioned earlier, we are of the considered opinion that evidence of this witness is not sterling worth. Moreover, he is a person with criminal background against whom criminal cases of serious criminal charge were pending, therefore, it is difficult to sustain conviction based on sole testimony of this witness. The Apex Court in the matter of **Bhimappa Chandappa Hosamani & Ors. Versus State of Karnataka** reported in **2006 (10) SBR 13**, judgment dated 20th September 2006 held that:-

> ".....on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

On the basis of above principle, if we put to the test of testimony of PW-16 Kripashankar, for the reasons mentioned earlier, his testimony cannot be said to be sterling worth. His evidence does not inspire full confidence of the Court in order to convict the accused persons based on the sole testimony of this witness.

In the matter of **Chandra Shekhar Bind and Others versus State of Bihar** reported in **(2001) 8 Supreme Court Cases 690**, in para-9, the Apex Court held that:-

"The Constitution Bench of this Court has, in the case of *Masalti v. State of U.P.* {AIR 1965 SC 202} held that under the Evidence Act, trustworthy evidence given by a single witness would be enough to convict the accused persons, whereas evidence given by half-a-dozen witnesses which is not trustworthy would not be enough to sustain the conviction. It was held that where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders, it is usual to adopt the test that the conviction could be sustained only if it is supported by

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

two or three or more witnesses who give a consistent account of the incident. It was held that in a sense, the test may be described as mechanical, but it cannot be treated as irrational or unreasonable. It was held that even though it is the quality of the evidence that matters and not the number of witnesses, still it is useful to adopt such a mechanical test. This two-witness theory has also been adopted by this Court in the case of Binay Kumar Singh V. State of Bihar. It is held that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is held that it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. It is held that even the testimony of one single witness is wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. It is held that all the same, when the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be a prudent exercise to insist on at least two reliable witnesses to vouchsafe the

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~identification of an accused as a participant in the~~ rioting."

In this case also, it is imperative that two-witness theory can be insisted upon for the reason that almost all the witnesses have turned hostile. Even Bishun at whose residence incident took place has stated that the persons who attacked the deceased persons are not among the accused persons standing in the Court. Two-witness theory is necessary to insist upon in this case also for the reason that this witness belongs to village Ranpur whereas, the incident took place in the village Sukhri which is at a distance of 5 km. This witness had not disclosed the basis of identification of the accused persons, therefore, based on solitary evidence of this witness finding recorded by the trial Court cannot be sustained. It is also settled law that more the serious offence the Court while scrutinizing the evidence of prosecution witnesses must remain more careful, must apply the strict scrutiny in order to ascertain truthfulness of the evidence of a witness. There is no other evidence to connect the accused persons with the crime in question.

Even though it is difficult to ascertain the motive behind the crime, as the motive always remains in the mind of accused. But if motive is established then it is easy for the prosecution to establish the crime against the accused. Where crime is committed by a single person then it is more difficult to establish the motive. But fact remains that when there is a mob attack i.e. attack is made by large number of persons particularly by

(30) (40)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

large number of persons of same village on the six persons of other village that too the deceased persons were also carrying sword, Gupti, like deadly weapon, it was not difficult for the investigating agency to bring on record the motive behind the crime. But unfortunately in this case prosecution has deliberately suppressed the motive behind the mob attack and thereby prosecution has suppressed the genesis of the crime. For this reason also it is not safe to place full confidence on the evidence of solitary witness i.e. PW-16 Kripa Shankar. In the circumstances, we are of the considered opinion that finding of the trial Court convicting the accused/appellants for commission of offence under Sections 302 and 147 of the I.P.C. cannot be sustained.

We have scrutinized and evaluated evidence of all the prosecution witnesses. We have reached to the conclusion that the prosecution has failed to establish the crime against the convicted accused persons and for the same reasons, we are of the considered opinion that even the prosecution has not been able to establish charge against the acquitted accused persons. Moreover, even PW-15 Gulab and PW-16 Kripa Shankar so called eyewitnesses on whose testimony eight persons have been convicted, have not said anything against these acquitted persons. Therefore, criminal revision filed by Puranram and Prabhu Ram is also liable to be dismissed. We see no reason to interfere with the finding of the trial Court in acquitting all the above 8 accused persons.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Barve	In the result:- (i) Criminal Revision No.551/2001 is dismissed. (ii) Criminal Appeal No.1182/2001 filed by Bechan Ram, Criminal Appeal No.1211/2001 filed by Achambhit Ram, Dharampal Das, Pal Das, Nohar Das, Lakhanram, Harihar Das, & Bechain Ram, and Criminal Appeal No.1106/2001 filed by Surjan Ram are allowed. Conviction and sentence imposed upon the accused/appellants under Sections 302 and 147 of the I.P.C. are set aside. They are acquitted of the said charges. It is stated that all the 8 accused/appellants are in jail since 4-10-99, therefore, they be set at liberty forthwith, if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**